

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD MUNGRO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 04-1304
	)	Judge Joy Flowers Conti
	)	Magistrate Judge Caiazza
M.H. HARTWIGER,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

It is respectfully recommended that the Plaintiff's Motion for Injunctive Relief be denied because he has requested relief against individuals who are not parties to this action.

**II. REPORT**

The Plaintiff, Ronald Mungro ("the Plaintiff" or "Mungro"), an inmate previously incarcerated at the State Correctional Institution at Greensburg ("SCI-Greensburg"), commenced this action pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, against M.H. Hartwiger, Prison Guard at SCI-Greensburg and Jeffrey Beard, Secretary of the Pennsylvania Department of Corrections claiming that the Defendants violated his rights as protected by the First and Eighth Amendments of the United States Constitution by using excessive force. On or about January 26, 2005, the Plaintiff was transferred to the State Correctional Institution at Houtzdale, Pennsylvania (SCI-Houtzdale).

On April 20, 2005, a Report and Recommendation was filed recommending that the Plaintiff's claims against Defendant Beard be dismissed and that he be allowed to proceed against Defendant Hartwiger in his individual capacity with respect to his Eighth

Amendment excessive force claim. See Doc. 27. On May 27, 2005, District Judge Joy Flowers Conti adopted the Report and Recommendation as the opinion of the court. See Doc. 31

On August 12, 2005, the Plaintiff filed a Motion for a Preliminary Injunction. See Doc. 41. In his request, Mungro seeks injunctive relief regarding the conditions of his confinement at SCI-Houtzdale. He claims that the administration at SCI-Houtzdale is subjecting his life to danger and that he should be placed in the witness protection program.

**A. Preliminary Injunctive Relief**

The party seeking a preliminary injunction has the burden of demonstrating: 1) a reasonable probability of success on the merits; 2) irreparable harm if the injunction is denied; 3) that the issuance of an injunction will not result in greater harm to the non-moving party; and 4) that the public interest would best be served by granting the injunction. See Council of Alternative Political Parties v. Hooks, 121 F.3d 876, 879 (3d Cir. 1997); Clean Ocean Action v. York, 57 F.3d 328, 331 (3d Cir. 1995); Opticians Ass'n of America v. Independent Opticians of America, 920 F.2d 187, 191-92 (3d Cir. 1990). The Court should issue the injunction only if the movant produces evidence sufficient to convince the trial judge that all four factors favor preliminary relief. See Opticians, 920 F.2d at 192 (citing ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987)).<sup>1</sup>

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1. These elements also apply to temporary restraining orders. Fink v. Supreme Court of Pennsylvania, 646 F. Supp. 569, 570 (M.D. Pa. 1986).

The purpose of the preliminary injunction is to preserve the status quo until the rights of the parties can be fairly and fully investigated and determined by strict legal proofs and according to the principles of equity. See Wetzel v. Edwards, 635 F.2d 283, 286 (4th Cir. 1980). Consequently, the grant of injunctive relief is an "extraordinary remedy which should be granted only in limited circumstances." See American Telephone & Telegraph Co. v. Winback and Conserve Program, Inc., 42 F.3d 1421 (3d Cir. 1994) (citing Frank's GMC Truck Center, Inc. v. General Motor Corp., 847 F.2d 100, 102 (3d Cir. 1988)), *cert. denied*, 514 U.S. 1103 (1995). The facts must clearly support a finding that immediate and irreparable injury will result to the movant if preliminary injunctive relief is denied. See United States v. Stazola, 893 F.2d 34, 37 n.3 (3d Cir. 1990). The plaintiff bears the burden of establishing a "clear showing of irreparable injury." See Hohe v. Casey, 868 F.2d 69, 72 (3d Cir.), *cert. denied*, 493 U.S. 848 (1989); ECRI, 809 F.2d at 226 (it is not enough to merely show irreparable harm; the plaintiff has the burden of showing immediate irreparable injury). Furthermore, when considering the type of injury sustained by a party seeking relief, the claimed injury cannot merely be possible, speculative or remote. See Dice v. Clinicorp, Inc., 887 F. Supp. 803, 809 (W.D. Pa. 1995). An injunction is not issued simply to eliminate

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*Cf.* NutriSweet Co. v. Vit-Mar Enterprises, Inc., 112 F.3d 689, 693 (3d Cir. 1997) (a temporary restraining order continued beyond the time permissible under Rule 65 must be treated as a preliminary injunction, and must conform to the standards applicable to preliminary injunctions).

a possibility of a remote future injury. See Acierno v. New Castle County, 40 F.3d 645, 655 (3d Cir. 1994). Absent a showing of immediate, irreparable injury, the court should deny preliminary injunctive relief. See *id.*

The Plaintiff's request for injunctive relief cannot be granted. Rule 65(d) of the Federal Rules specifically provides that an injunction is binding only upon the parties to the action. The only remaining party to this action is Defendant Hartwiger, who is a correctional guard employed at SCI-Greensburg. The Plaintiff's complaints relate to conditions which allegedly exist at SCI-Houtzdale, where Mungro is currently incarcerated. Because Defendant has no connection to SCI-Houtzdale, there is no basis to grant Mungro's requested relief.

### **III. CONCLUSION**

It is respectfully recommended that the Plaintiff's Motion for a Preliminary Injunction be denied.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by September 5, 2005. Responses to objections are due by September 5, 2005.

S/Francis X. Caiazza  
FRANCIS X. CAIAZZA  
UNITED STATES MAGISTRATE JUDGE

Dated: August 19, 2005

cc: Joy Flowers Conti  
United States District Judge

Ronald Mungro, EJ-3868  
SCI Houtzdale  
P.O. Box 1000  
Houtzdale, PA 16698-1000

Christian D. Bareford, Deputy Attorney General  
Office of the Attorney General  
6th Floor, Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219